

# FLETCHER & SIPPEN LLC

ATTORNEYS AT LAW

29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832

JEREMY M. BERMAN  
(312) 252-1510  
jberman@fletcher-sippel.com

226131

Phone: (312) 252-1500  
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www.fletcher-sippel.com

December 7, 2009

## VIA FEDERAL EXPRESS

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W., Room 1034  
Washington, DC 20024

ENTERED  
Office of Proceedings  
DEC - 8 2009  
Part of  
Public Record

DEC 8 2009

Re: **Docket No. AB-1054 (Sub-No. 1X)**  
**Northern Plains Railroad, Inc.--Discontinuance of Service Exemption**  
**--In Bottineau, Rolette And Towner Counties, North Dakota**

Dear Chief Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Notice of Exemption of Northern Plains Railroad, Inc. Pursuant to 49 C.F.R. § 1152.50**, dated December 7, 2009. A check in the amount of \$3,700.00, representing the appropriate fee for this filing, is attached.

One extra copy of the Notice and this letter also are enclosed. Please date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

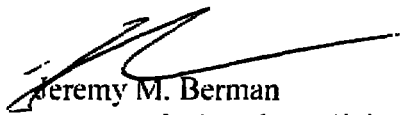
If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted.

**FEE RECEIVED**

DEC - 8 2009

**SURFACE  
TRANSPORTATION BOARD**

  
Jeremy M. Berman  
Attorney for Northern Plains Railroad, Inc.

Enclosures

**FILED**  
DEC - 8 2009  
**SURFACE  
TRANSPORTATION BOARD**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1054 (SUB-NO. 1X)

NORTHERN PLAINS RAILROAD, INC.  
-- DISCONTINUANCE OF SERVICE EXEMPTION --  
IN BOTTINEAU, ROLETTE AND TOWNER COUNTIES, NORTH DAKOTA

NOTICE OF EXEMPTION OF  
NORTHERN PLAINS RAILROAD, INC.  
PURSUANT TO 49 C.F.R. § 1152.50

DEC 8 2009  
ENTERED  
Office of Proceedings

DEC - 8 2009

Part of  
Public Record

226/31

**FILED**  
DEC - 8 2009  
SURFACE  
TRANSPORTATION BOARD

**FEE RECEIVED**  
DEC - 8 2009  
SURFACE  
TRANSPORTATION BOARD

William C. Sippel  
Jeremy M. Berman  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1500

ATTORNEYS FOR NORTHERN PLAINS  
RAILROAD, INC.

Dated: December 7, 2009

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. AB-1054 (SUB-NO. 1X)

NORTHERN PLAINS RAILROAD, INC.  
-- DISCONTINUANCE OF SERVICE EXEMPTION --  
IN BOTTINEAU, ROLETTE AND TOWNER COUNTIES, NORTH DAKOTA

---

**NOTICE OF EXEMPTION OF  
NORTHERN PLAINS RAILROAD, INC.  
PURSUANT TO 49 C.F.R. § 1152.50**

Northern Plains Railroad, Inc. ("NPR") hereby submits this Notice of Exemption pursuant to 49 C.F.R. Part 1152, Subpart F, to discontinue service on a line of railroad owned by Soo Line Railroad Company d/b/a Canadian Pacific Railway ("CPR") and leased and operated by NPR in Bottineau, Rolette and Towner Counties, North Dakota, referred to herein as the "Line," between milepost 474.5 in Bisbee, Towner County, North Dakota and milepost 535.0 in Kramer, Bottineau County, North Dakota, a distance of 60.5 miles.

In accordance with the requirements of 49 C.F.R. § 1152.50(d)(2), NPR submits the following information:

**General Corporation Information: 49 C.F.R. § 1152.22(a)(1)-(2)**

NPR is a Class III rail carrier which currently leases from CPR and operates approximately 388 miles of rail line in North Dakota and Minnesota. NPR also operates approximately 69.15 miles of line in North Dakota owned by Mohall Central Railroad, Inc.

The complete name and address of NPR is:

Northern Plains Railroad, Inc.  
100 Railroad Avenue  
Fordville, North Dakota 58231

**Relief Sought: 49 C.F.R. § 1152.22(a)(3)**

Pursuant to the Board's class exemption for discontinuance of service, codified at 49 C.F.R. Part 1152. Subpart F, NPR intends to discontinue service over a portion of line of railroad operated by NPR between milepost 474.5 in Bisbee, Towner County, North Dakota and milepost 535.0 in Kramer, Bottineau County, North Dakota, a distance of 60.5 miles. NPR obtained lease and operation authority for the Line in Northern Plains Railroad, Inc. – Lease and Operation Exemption – Certain Lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway, Finance Docket No. 33324 (STB served January 9, 1997).

CPR has sought and obtained abandonment authority for the Line in Soo Line Railroad Company c/b/a Canadian Pacific Railway – Abandonment Exemption – In Bottineau, Rolette and Towner Counties, ND, Docket No. AB-57 (Sub-No. 56X) (STB served September 5, 2008).

**Map: 49 C.F.R. § 1152.22(a)(4)**

A map of the Line to be abandoned is attached hereto as Exhibit A.

**NPR'S Representative: 49 C.F.R. § 1152.22(a)(7)**

NPR's representative to whom correspondence regarding this abandonment should be sent is:

Jeremy M. Berman  
Fletcher & Sippel LLC  
29 N. Wacker Dr., Suite 920  
Chicago, IL 60606  
312-252-1500

**ZIP Codes Traversed: 49 C.F.R. § 1152.22(a)(8)**

The portion of the Line to be abandoned traverses United States Postal Service ZIP Codes 58748, 58318, 58384, 58366, 58310 and 58317.

**Qualification for Class Exemption: 49 C.F.R. § 1152.50(b)**

Per the certificate and verification attached hereto as Exhibit B, NPR certifies that no local revenue traffic has moved over the Line for at least the last two years, any overhead traffic can be rerouted over other lines, and no formal complaint filed by a user of rail service on the Line (or a state or local governmental entity acting on behalf of such user) regarding cessation of service is pending with the Board or any U.S. District Court or has been decided in favor of the complainant during the last two years.

**Consummation Date: 49 C.F.R. § 1152.50(d)(2)**

NPR will not consummate the proposed discontinuance any earlier than January 27, 2010.

**Suitability for Other Public Purposes: 49 C.F.R. § 1152.22(e)(4)**

Because this is a discontinuance, trail use / rail banking and other public use conditions are not appropriate.<sup>1</sup>

**Labor Protection: 49 C.F.R. 1152.50(d)(2)**

The level of labor protection applicable in rail line abandonments is that established in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

**Certificate of Compliance with Notice Requirements: 49 C.F.R. § 1152.50(d)(2)**

A certificate that the notice requirements of 49 C.F.R. § 1152.50(d)(1) have been complied with and that, in accordance with 49 C.F.R. § 1105.12, NPR has published notice of the proposed discontinuance in a newspaper of general circulation in each county through which

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<sup>1</sup> See, e.g., R.J. Corman Railroad Company/Tennessee Terminal, LLC – Discontinuance of Service Exemption – In Shelby County, TN, Docket No. AB-1042X (STB served September 16, 2009); Tulare Valley Railroad Company – Discontinuance of Service Exemption – In Tulare County, CA, Docket No. AB-397 (Sub-No. 6X) (STB served April 17, 2009); Mid-Michigan Railroad, Inc. – Discontinuance of Service Exemption – In Kent And Ottawa Counties, MI, Docket No. AB-364 (Sub-No. 15X) (STB served March 3, 2009).

which the Line passes is attached hereto as Exhibit C. Because NPR is proposing to discontinue service on the Line, and not abandon the Line, the notice requirement of 49 C.F.R. § 1105.11 do not apply.<sup>2</sup>

**Environmental and Historic Report: 49 C.F.R. §§ 1105.7 and 1105.8**

Because NPR is proposing to discontinue service on the Line, and not abandon the Line, no environmental or historic report is required.<sup>3</sup> An environmental and historic review was conducted in connection with CPR's proposed abandonment of the Line in Docket No. AB-57 (Sub-No. 56X).

Respectfully submitted,

By: 

William C. Sippel  
Jeremy M. Berman  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1500

**ATTORNEYS FOR NORTHERN PLAINS  
RAILROAD, INC.**

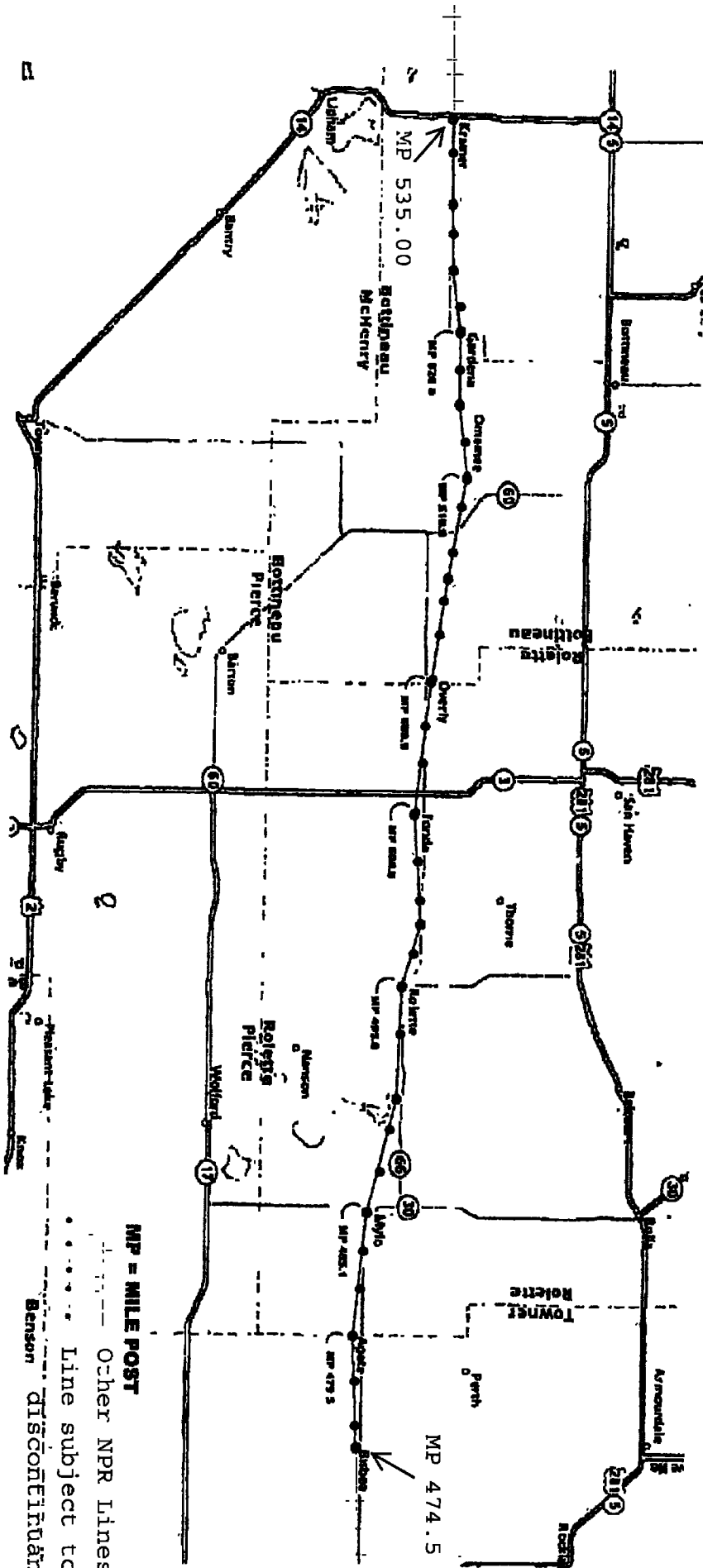
Dated: December 7, 2009

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<sup>2</sup> See footnote 1.

<sup>3</sup> See footnote 1.

**Exhibit A – Map**





## **Exhibit B – Certificate and Verification**

**DOCKET NO AB-1054 (SUB-NO. 1X)**

**NORTHERN PLAINS RAILROAD, INC.  
- DISCONTINUANCE OF SERVICE EXEMPTION -  
IN BOTTINEAU, ROLETTE AND TOWNER COUNTIES, NORTH DAKOTA**

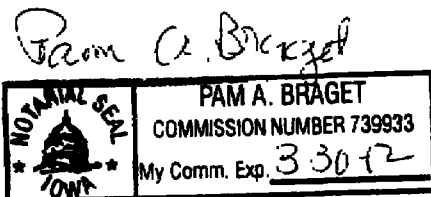
**CERTIFICATE AND VERIFICATION THAT RAIL LINE MEETS  
CRITERIA OF 49 C.F.R. SECTION 1152.50(b)**

STATE OF IOWA                    )  
  ) ss  
COUNTY OF CERRO GORDO    )

Gregg Haug, being duly sworn, deposes and says

1. That I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate to the best of my knowledge, information and belief.
2. That no local traffic has moved over the line of railroad owned by Soo Line Railroad Company d/b/a Canadian Pacific Railway and leased and operated by Northern Plains Railroad, Inc. between milepost 474.5, in Bisbee, Towner County, North Dakota and milepost 535.0 in Kramer, Bottineau County, North Dakota, a distance of 60.5 miles, for at least two years, and that there is no overhead traffic to be rerouted over other lines; and
3. That no formal complaint filed by a user of rail service on the subject line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line is either pending with the Surface Transportation Board or any U.S. District Court or has been decided in favor of the complainant within the last two years; and

Dated: November 25, 2009



*Gregg Haug*  
Gregg Haug  
Northern Plains Railroad, Inc.

Subscribed and sworn to before me  
this 25<sup>th</sup> day of November, 2009

## **Exhibit C- Certificate of Compliance**

DOCKET NO. AB-1054 (SUB-NO. 1X)

NORTHERN PLAINS RAILROAD, INC.  
-- DISCONTINUANCE OF SERVICE EXEMPTION --  
IN BOTTINEAU, ROLETTE AND TOWNER COUNTIES, NORTH DAKOTA

CERTIFICATE OF COMPLIANCE WITH 49 C.F.R. §§ 1105.12 and 1152.50(d)(1)

I hereby certify that on November 24, 2009, Northern Plains Railroad, Inc. complied with the notice requirements of 49 C.F.R. § 1152.50(d)(1). Copies of the notices are included as Attachment A to this certificate.

I also certify that newspaper notices were published in the *Turtle Mountain Star* on November 30, 2009, in the *Bottineau Courant* on December 1, 2009 and in the *Towner County Record Herald* on December 5, 2009. The notices alerted the public to the proposed abandonment, to possible reuse alternatives, and to procedures for participating in the STB proceeding. Affidavits of publication received to are attached to this certificate as Attachment B.

Dated this 7<sup>th</sup> day of December, 2009.

  
\_\_\_\_\_  
Jeremy M. Berman  
Counsel for Northern Plains Railroad, Inc.

## Attachment A – 10 Day Letters

# FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832

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Fax: (312) 252-2400  
www.fletcher-sippel.com

JEREMY M. BERMAN  
(312) 252-1510  
jberman@fletcher-sippel.com

November 24, 2009

Mr. Tom Tidwell  
Chief of the Forest Service  
U.S. Department of Agriculture  
1400 Independence Avenue, S.W.  
Washington, DC 20250-0003

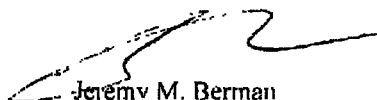
Re: Docket No. AB-1054 (Sub-No. 1X) - Northern Plains Railroad, Inc. - Discontinuance of Service  
Exemption - In Bottineau, Rolette and Towner Counties, North Dakota

Dear Mr. Tidwell:

This is to inform you that pursuant to 49 C.F.R. § 1152.50 (Exempt Abandonments and Discontinuance of Service and Trackage Rights), Northern Plains Railroad, Inc. shall on or after December 4, 2009, file a Notice of Exemption with the Surface Transportation Board for approval to discontinue service on a 60.5 mile line of railroad between milepost 474.5, in Bisbee, Towner County, North Dakota and milepost 535.0 in Kramer, Bottineau County, North Dakota. Such line runs through U.S. Postal Zip Codes 58748, 58318, 58384, 58366, 58310 and 58317. A map of the line is enclosed

The exemption procedures set forth in § 1152.50 are being used in this case because no local traffic has moved over this line for at least two years and there is no overhead traffic that would have to be rerouted over other lines. Should you have any questions or need additional information regarding this proposed discontinuance feel free to contact me at 312-252-1510.

Very truly yours,



Jeremy M. Berman  
Northern Plains Railroad, Inc.

Encl.

# FLETCHER & SIPPEL LLC

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Suite 920  
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JEREMY M. BERMAN  
(312) 252-1510  
jberman@fletcher-sippel.com

November 24, 2009

Military Surface Deployment & Distribution Command  
Transportation Engineering Agency  
ATTN: SDTE-SA (Railroads for National Defense)  
709 Ward Drive, Building 1990  
Scott AFB, IL 62225-5357

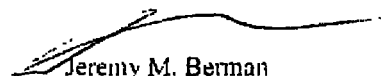
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Northern Plains Railroad, Inc.

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**JEREMY M. BERMAN**  
(312) 252-1510  
jberman@fletcher-sippel.com

November 24, 2009

Recreation and Conservation  
National Park Service  
1849 C Street, NW  
Washington, D.C. 20240

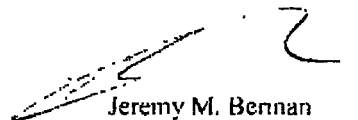
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Exemption – In Bottineau, Rolette and Towner Counties, North Dakota

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Jeremy M. Berman  
Northern Plains Railroad, Inc.

Encl.



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(312) 252-1510  
jberman@fletcher-sippel.com

November 24, 2009

North Dakota Public Service Commission  
600 E. Boulevard, Dept. 408  
Bismarck, ND 58505-0480


Re: Docket No. AB-1054 (Sub-No. 1X) - Northern Plains Railroad, Inc. - Discontinuance of Service  
Exemption - In Bottineau, Rolette and Towner Counties, North Dakota

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Jeremy M. Berman  
Northern Plains Railroad, Inc.

Encl.

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JEREMY M. BERMAN  
(312) 252-1510  
jberman@fletcher-sippel.com

November 24, 2009

North Dakota Department of Transportation - Planning  
608 E. Boulevard Avenue  
Bismarck, ND 58505-0700


Re: Docket No. AB-1054 (Sub-No. 1X) - Northern Plains Railroad, Inc. - Discontinuance of Service  
Exemption - In Bottineau, Rolette and Towner Counties, North Dakota

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Very truly yours,

  
Jeremy M. Berman  
Northern Plains Railroad, Inc.

Encl.

**Attachment B – Affidavits of Publication**

# AFFIDAVIT OF PUBLICATION

STATE OF NORTH DAKOTA )

) ss.

County of Rolette )

Jason Nordmark being first duly sworn, deposes and says that he is the publisher of the hereinafter described newspaper and makes this affidavit as such that the annexed printed copy of Notice of public notice

was taken from the Turtle Mountain Star, a newspaper which, during the whole time of publication of said Notice hereinafter state, had been, and is printed and published in Rolla, County of Rolette and State of North Dakota, that the said Notice was published in said newspaper on the following dates:

NOV 30, 2009, \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_

in each and every issue of the full number thereof, upon which days or times of publication aforementioned the said newspaper was regularly published and that the said newspaper was then and is now a bona-fide legal newspaper published at Rolla, County of Rolette, and State of North Dakota.

Affiant

Subscribed and sworn to before me this 30th day of

November, 2009.

Debbie Fisher

Notary Public, Rolette County  
North Dakota

## Public notice

Northern Plains Railroad Inc. (NPR) gives notice that on or about December 4, 2009, it intends to file with the Surface Transportation Board, Washington, DC 20423, a notice of exemption under 49 CFR 1152 Subpart F Exempt Abandonments permitting discontinuance of NPR's overhead trackage rights on approximately 60.5 miles of rail line of Canadian Pacific Railway between milepost 474.5 near Towner, Towner County, and milepost 535.0 near Kramer, Bottineau County, North Dakota which traverses through United States Postal Service ZIP Codes 58748, 58718, 58384, 58366, 58310 and 58317, in Towner, Rolette and Bottineau Counties, North Dakota. The proceeding will be docketed as No. AB-1054 (Sub-No. 1X). The proposed discontinuance is exempt from the Board's environmental and historic reporting requirements, 49 C.F.R. 1105.6(c) and 1105.8(b). Interested persons may make inquiries regarding environmental matters by writing to the Section of Environmental Analysis, Surface Transportation Board, Washington, DC 20423 or by calling that office at 202-245-0245. Appropriate offers of financial assistance to continue rail service can be filed with the Board. Public use conditions and rail banking/trails use are not available in proceedings involving only a discontinuance and not an abandonment. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Section of Administrative Office of Proceedings, 385 E Street SW, Washington DC 20423-0001. See 49 CFR 1104.11(a) and 1104.3(a), and one copy must be served on applicants' representative. See 49 CFR 1104.12(a). Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Public Assistance, Governmental Affairs and Compliance at 202-245-0238. Copies of any comments or requests for conditions should be served on the NPR's representative, Jeremy Berman, Fletcher & Sippel LLC, 29 N. Wacker Dr., Suite 920, Chicago, IL 60606. (November 30)